

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JOSE GERMAN AVELAR,

Plaintiff,

Civil Action No.  
CV-11-2172

- against -

(Mauskopf, J.)  
(Mann, M.J.)

J. COTOIA CONSTRUCTION INC., its  
agents or employees; and PERMANENT  
MISSION OF THE PEOPLE'S REPUBLIC  
OF THE CONGO, formerly known as  
GOUBERNEMENT DE LA REPUBLIQUE  
DU CONGO BRAZZAVILLE, its agents  
and/or employees,

Defendants

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STATEMENT OF INTEREST OF THE  
UNITED STATES OF AMERICA

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### PRELIMINARY STATEMENT

The United States of America respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517<sup>1</sup> in order to inform the Court of the position of the United States concerning certain issues in this action. The Permanent Mission of the Republic of the Congo to the United Nations (“the Congo’s U.N. Mission” or “the Mission”) has been named as a defendant in this private action commenced by Plaintiff Jose German Avelar. Plaintiff, who alleges that he was injured on Mission property, filed suit and thereafter obtained a default judgment against the Mission. According to Plaintiff’s counsel, following entry of the default judgment, Plaintiff attached the Mission’s bank accounts and filed liens against the Mission’s diplomatic office and official residence.

The record indicates that Plaintiff’s actions are inconsistent with the federal and international law governing legal actions against foreign states in at least three respects and are therefore legally ineffective. First, according to the affidavit of service, Plaintiff purports to have served process on the Congo’s U.N. Mission by having a process server deliver a copy of the summons and amended complaint to an unnamed woman on the premises of the Mission. See Aff. of Service, Dkt. No. 3, Ex. C. Service by this method, however, is not valid under the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. §§ 1602 et seq., and contravenes the inviolability of the Mission established in certain international agreements to which the United States is a party, discussed in further detail below. Second, there is no indication in the record

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<sup>1</sup> 28 U.S.C. § 517 provides:

The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any state or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.

that Plaintiff served a copy of the default judgment in the manner required by the FSIA. Third and finally, the United States' existing international obligations (expressly preserved by the FSIA) establish the immunity of diplomatic property and therefore preclude any attempt by Plaintiff to enforce the default judgment it obtained against the Congo's U.N. Mission by executing on liens against property that is part of the Mission's premises or by preventing the Mission from drawing on funds in official bank accounts used for Mission purposes.

## **BACKGROUND**

### **A. The History of this Litigation**

This action arises from an accident that allegedly took place on February 12, 2009, during the course of renovation work at the official residence of the Republic of the Congo's Permanent Representative to the United Nations in Bronxville, New York. See Am. Verified Compl., Dkt. No. 3, Ex. B. Plaintiff Jose German Avelar ("Plaintiff") alleges that on that date, he was seriously injured when a ditch in which he was performing excavation work collapsed. Plaintiff further alleges that, at the time of the accident, he was employed by National Waterproofing Systems LLC and was working under the direction and supervision of J. Cotoia Construction Inc. ("Cotoia"), the general contractor that the Congo's U.N. Mission had hired to renovate the official residence. Id. ¶¶ 5, 7.

After filing his original complaint on March 23, 2009, on June 15, 2009, Plaintiff, by counsel, filed an amended complaint in the Supreme Court, State of New York, Queens County ("the state court") against (i) Cotoia, its agents, and/or employees; and (ii) the Congo's U.N.

Mission, its agents, and/or employees.<sup>2</sup> The amended complaint alleged, in relevant part, that the Congo U.N. Mission, in violation of N.Y. Lab. Law §§ 200, 240–241-a (McKinney 2009), had been negligent in overseeing the work performed on its premises. Id. ¶¶ 18–29. According to a copy of the affidavit of service filed with the state court, Plaintiff purports to have served the Congo’s U.N. Mission on July 17, 2009, by having a process server deliver a copy of the summons and amended complaint to an unidentified woman at the Mission’s headquarters, located at 14 East 65th Street, New York, New York. See Aff. of Service, Dkt. No. 3, Ex. C. In addition, on October 9, 2009, Plaintiff’s counsel sent a letter to the Congo’s U.N. Mission stating that counsel would seek a default judgment if he did not hear from the Mission within ten days. See Letter from Uriel E. Gribetz, Esq. to Perm. Mission of the People’s Rep. of Congo (Oct. 9, 2009), Dkt. No. 3, Ex. H, Pt. 1, at 37. In response, by letter to Plaintiff’s counsel dated October 21, 2009, Ambassador Balé, the Republic of the Congo’s Permanent Representative to the United Nations and the head of the Congo’s U.N. Mission, acknowledged that “a summons has been issued” but noted the Mission’s position that it was not liable for Plaintiff’s injuries. See Letter from Raymond Serge Balé, Ambassador, Perm. Mission of the Rep. of the Congo to the U.N., to Uriel E. Gribetz, Esq. (Oct. 21, 2009), Dkt. No. 6, at 6.

On October 19, 2009, Plaintiff moved for a default judgment against the Congo’s U.N. Mission. See Notice of Mot., Oct. 19, 2009, Dkt. 3, Ex. H, Pt. 1, at 70. The state court granted

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<sup>2</sup> In his amended complaint, Plaintiff names the defendant as the “Permanent Mission of the People’s Republic of the Congo.” See Am. Verified Compl., Dkt. No. 3, Ex. B. The country’s official name, however, is “the Republic of the Congo” and the official name of its U.N. Mission is “the Permanent Mission of the Republic of the Congo to the United Nations.”

the motion on December 9, 2009.<sup>3</sup> See Order, Dec. 9, 2009, Dkt. No. 3, Ex. D. On November 16, 2010, the state court held an inquest for the purpose of assessing damages against the Congo's U.N. Mission. At the inquest, Plaintiff testified about the accident and his injuries. See Inquest Tr., Nov. 16, 2010, Dkt. No. 3, Ex. H, Pt. 1, at 13–32. After hearing Plaintiff's testimony, the state court awarded Plaintiff \$375,000 for past pain and suffering and \$100,000 for future pain and suffering, as well as interest, costs, and disbursements. See Mem., Nov. 17, 2010, Dkt. No. 3, Ex. F. On February 14, 2011, the Queens County Clerk docketed and recorded a judgment in the amount of \$486,553.97 against the Congo's U.N. Mission. See Judgment, Feb. 14, 2011, Dkt. No. 3, Ex. G.

The Congo's U.N. Mission retained counsel, who on May 4, 2011, removed the case to this Court pursuant to 28 U.S.C. § 1441(d). See Notice of Removal, Dkt. No. 1. On May 12, 2011, Plaintiff filed a motion to remand on the ground that removal was untimely. See Pl.'s Mot. to Remand, Dkt. No. 6. In the motion, Plaintiff's counsel represented to the Court that Plaintiff had frozen bank accounts belonging to the Mission and had also filed liens against the Mission's diplomatic office and the official residence of Ambassador Balé.<sup>4</sup> Id. at 2. On May 18, 2011, the Congo's U.N. Mission filed an opposition to Plaintiff's motion to remand. See Def.'s Opp'n to Pl.'s Mot. to Remand, Dkt. No. 7. In support of its opposition to Plaintiff's motion to remand, the Congo's U.N. Mission attached a signed declaration from Ambassador Balé, in which he

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<sup>3</sup> The Court also awarded a default judgment against Cotoia but subsequently granted that defendant's motion to vacate the default awarded against it. See Order, Jan. 19, 2010, Dkt. No. 3, Ex. H, Pt. 2, at 50. The plaintiff's claim against Cotoia was eventually dismissed pursuant to a settlement agreement. See Order, Oct. 27, 2010, Dkt. No. 3, Ex. E.

<sup>4</sup> The United States has been unable to confirm that liens have in fact been filed against the Mission's real property.

stated that “Plaintiff has successfully filed liens against Congo Mission’s properties and attached its bank accounts, even though the properties and the funds in the bank accounts are used for embassy-related and diplomatic purposes.” Declaration of Hon. Raymond Serge Balé (“Balé Decl.”), Dkt. No. 8 ¶ 12. Plaintiff’s motion to remand is currently fully briefed and pending before the Court.<sup>5</sup>

#### **B. Immunity of Diplomatic Property From Execution and Attachment**

The FSIA is the exclusive basis for jurisdiction over foreign states in federal and state courts and also governs the execution of judgments obtained against foreign states. Under 28 U.S.C. § 1609, a foreign state’s property in the United States is generally immune from attachment or execution unless a specific statutory exception applies. When it enacted the FSIA, however, Congress recognized that the United States had existing international legal obligations with respect to the protection of diplomatic property. Congress therefore provided that the FSIA provisions addressing the immunity from attachment and execution of a foreign state’s property were “[s]ubject to existing international agreements to which the United States is a party at the time of enactment of this Act.” 28 U.S.C. § 1609; see also H.R. Rep. No. 94-1487, at 12 (1976), reprinted in 1976 U.S.C.C.A.N. 6604, 6610 (noting that the legislation was not “intended to affect either diplomatic or consular immunity”).

At the time the FSIA was enacted in 1976, the United States had already entered into several international agreements establishing its obligation to protect the property of U.N. missions from interference. The United Nations Charter, which was ratified by the United States

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<sup>5</sup> The United States takes no position on the motion to remand. The United States is filing this Statement of Interest in this Court because the action is currently pending here.

on August 8, 1945, provides that “Representatives of the Members of the United Nations . . . shall . . . enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.” U.N. Charter art. 105, para. 2. In addition, the United States has agreed that representatives to the United Nations “shall . . . be entitled . . . to the same privileges and immunities . . . as [the United States] accords to diplomatic envoys accredited to it.” Agreement between the United Nations and the United States Regarding the Headquarters of the United Nations art. V, § 15, done at Lake Success on June 26, 1947, T.I.A.S. 1676 [hereinafter Headquarters Agreement]. The United States has further agreed that the representatives of United Nations members shall enjoy “such privileges, immunities and facilities . . . as diplomatic envoys enjoy.” Convention on the Privileges and Immunities of the United Nations art. IV, § 11(g), done at New York on Feb. 13, 1946, 21 U.S.T. 1418, T.I.A.S. 7502 (entered into force with respect to the United States Apr. 29, 1970) [hereinafter U.N. Convention]. These agreements ensure that diplomats accredited to the United Nations and the permanent missions through which they operate receive the same protections as diplomats and missions accredited to the United States, including the protections accorded to diplomatic property by the Vienna Convention on Diplomatic Relations, done at Vienna on Apr. 18, 1961, 23 U.S.T. 3227, T.I.A.S. 7502 (entered into force with respect to the United States Dec. 13, 1972) [hereinafter Vienna Convention]. See 767 Third Avenue Assocs. v. Perm. Mission of the Republic of Zaire to the U.N., 988 F.2d 295, 298 (2d Cir. 1993) (applying Article 22 of the Vienna Convention to protect a diplomatic mission to the U.N. from eviction proceedings).

Two types of diplomatic property are involved here, each of which is addressed by the Vienna Convention: the premises of a diplomatic mission and bank accounts maintained by a

diplomatic mission. With respect to a diplomatic mission's premises, Article 22 of the Vienna Convention states that "[t]he premises of the mission shall be inviolable" and further specifies that "[t]he premises of the mission, their furnishings and other property thereon . . . shall be immune from search, requisition, attachment or execution." Vienna Convention art. 22. The Vienna Convention defines the "premises of the mission" as "the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission." *Id.* art. 1(i).

With respect to a diplomatic mission's bank accounts, Article 25 of the Vienna Convention provides that "[t]he receiving State shall accord full facilities for the performance of the functions of the mission." *Id.* art. 25. A diplomatic mission's access to bank accounts in the receiving state is critical to its ability to perform its functions, and official bank accounts used for purposes of the mission are therefore protected by diplomatic immunity. *See Liberian Eastern Timber Corp. v. Government of the Republic of Liberia*, 659 F. Supp. 606, 608 (D.D.C. 1987) (holding that an embassy's official bank accounts were entitled to diplomatic immunity under Article 25 of the Vienna Convention).

### **C. The FSIA Governs Service of Process Upon Foreign States**

A provision of the FSIA, 28 U.S.C. § 1608(a), sets forth the requirements for serving process on foreign states in actions commenced in both "the courts of the United States and of the States." Reflecting the inviolability of foreign missions long established as a principle of international law and incorporated in the Vienna Convention, none of the four service options provided in Section 1608(a) specifically allows service by delivery to a foreign mission.



Section 1608(a)(1) provides for service by delivery of the summons and complaint “in accordance with any special arrangement for service between the plaintiff and the foreign state.” If no such special arrangement exists, service must be accomplished “in accordance with an applicable international convention on service of judicial documents.” *Id.* § 1608(a)(2). If no international convention is applicable, service must be made by having the clerk of court send, via registered mail, a copy of the summons, complaint, and a notice of suit, along with a translation of each into the foreign state’s official language, to the head of the foreign state’s ministry of foreign affairs. *Id.* § 1608(a)(3). Finally, if service cannot be made by this method within 30 days, service must be made by having the clerk of court send copies of the summons, complaint, and a notice of suit, together with a translation of each into the foreign state’s official language, to the Secretary of State, who must then use diplomatic channels to accomplish service. *Id.* § 1608(a)(4). Section 1608 also requires a plaintiff to “establish[] his claim or right to relief by evidence satisfactory to the court” before the entry of a default judgment against a foreign state and requires that a copy of any default judgment be sent to the foreign state in the same manner prescribed for service of process. *Id.* § 1608(e).

## ARGUMENT

### A. **Based on the Record, Plaintiff’s Purported Service of the Amended Complaint on the Congo’s U.N. Mission Failed to Comply with the FSIA and Was Contrary to the Vienna Convention.**

A lawsuit against a foreign state’s permanent mission to the United Nations is, by definition, a suit against a foreign sovereign. *See Gray v. Perm. Mission of the People’s Republic of the Congo to the U.N.*, 443 F. Supp. 816, 819–20 (S.D.N.Y.) (“[I]t is hard to imagine

a purer embodiment of a foreign state than that state's permanent mission to the United Nations."'), aff'd without opinion, 580 F.2d 1044 (2d Cir. 1978); Lewis & Kennedy, Inc. v. Perm. Mission of the Republic of Botswana to the U.N., No. 05 Civ. 2591, 2005 WL 1621342, at \*3 (S.D.N.Y. July 12, 2005) (citing Gray, 443 F. Supp. at 820). Therefore, Plaintiff was required to serve process upon the Congo's U.N. Mission in accordance with 28 U.S.C. § 1608(a), which governs service "upon a foreign state" in both the "courts of the United States and of the States."

Plaintiff bears the burden of showing that he properly served the Mission in accordance with Section 1608(a). Lewis & Kennedy, 2005 WL 1621342, at \*2. Plaintiffs must comply strictly with the service of process requirements of Section 1608(a). See USAA Casualty Ins. Co. v. Perm. Mission of the Republic of Namibia, No. 10 Civ. 4262, 2010 WL 4739945, at \*1 (S.D.N.Y. Nov. 17, 2010); Lewis & Kennedy, 2005 WL 1621342, at \*3 ("Courts have been unequivocal that § 1608(a) 'mandates strict adherence to its terms, not merely substantial compliance.'" (citation omitted)). As a result, a plaintiff cannot excuse his failure to comply with Section 1608(a) by showing the defendant had actual notice of the lawsuit. See Finamar Investors Inc. v. Republic of Tadjikistan, 889 F. Supp. 114, 118 (S.D.N.Y. 1995) ("Whether or not respondent received actual notice of the suit is irrelevant when strict compliance is required.").

Subsections (1) through (4) of Section 1608(a) provide the only four methods by which process may be served on a foreign state. The record contains evidence of only one attempt to serve process on the Congo's U.N. Mission: hand delivery on July 17, 2009, of the summons and amended complaint in English upon an unidentified woman on the premises of the Mission. See

Aff. of Service, Dkt. No. 3, Ex. C; Balé Decl., Dkt. No. 8 ¶¶ 5, 6(a). This purported service, proof of which was used to obtain the default judgment, see Notice of Mot., Oct. 19, 2009, Dkt. 3, Ex. H, Pt. 1, at 70, 77; id. Pt. 2, at 1, failed to comply with any of the methods set forth in subsections (1) through (4) of Section 1608(a):

- a. There is no evidence in the record that there has ever been any special arrangement between Plaintiff and the Congo's U.N. Mission for service of process under Section 1608(a)(1).<sup>6</sup>
- b. The Republic of the Congo is not a party to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, done at the Hague on Nov. 15, 1965, T.I.A.S. 6638 [hereinafter Hague Service Convention], the principal convention governing service of judicial documents under Section 1608(a)(2). See Hague Conference on Private International Law, Status Table, [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=17](http://www.hcch.net/index_en.php?act=conventions.status&cid=17) (last updated Apr. 8, 2011). Plaintiff does not purport to have made service consistent with the Hague Service Convention or any other convention.
- c. Plaintiff does not purport to have made service under Section 1608(a)(3) by arranging for the clerk of court to send by mail copies of the summons, amended complaint, and a notice of suit, as well as translations of each into French (the

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<sup>6</sup> In its opposition to Plaintiff's motion to remand, the Congo's U.N. Mission states that "[t]here was never any contract or special arrangement between Plaintiff and the Congo Mission," a fact that Plaintiff has yet to contest. See Def.'s Opp'n to Pl.'s Mot. to Remand, Dkt. No. 7, at 8.

official language of the Republic of the Congo), to the head of the Republic of the Congo's ministry of foreign affairs. Certainly, Plaintiff's July 17, 2009 attempt to serve process by hand on an unnamed woman on the Mission's premises does not satisfy Section 1608(a)(3)'s requirements.

- d. Finally, Plaintiff does not purport to have served process under Section 1608(a)(4) by arranging for the clerk of court to send by mail to the Department of State's Director of Special Consular Services, for transmission via diplomatic channels, two copies each of the summons, amended complaint, and a notice of suit, all translated into French. Clearly, the one attempt to serve process on the Mission that is reflected in the record does not comply with Section 1608(a)(4).

Thus, Plaintiff's purported service of the summons and the amended complaint upon the Congo's U.N. Mission failed to comply with Section 1608(a) and was therefore ineffective to initiate an action against it.

In addition, Plaintiff's attempt to serve process upon the Congo's U.N. Mission was contrary to the inviolability of the Mission because, according to the record, Plaintiff had a process server personally deliver a copy of the amended complaint and summons on the premises of the Mission. See Aff. of Service, Dkt. No. 3, Ex. C. Article 22 of the Vienna Convention, which, as noted previously, applies to permanent missions to the United Nations through the Headquarters Agreement and the U.N. Convention, states that "[t]he premises of the mission shall be inviolable." The term "inviolable" is an "advisedly categorical, strong word." 767 Third Avenue Assocs., 988 F.2d at 298. The Vienna Convention "recognize[s] no exceptions to

mission inviolability.” *Id.* at 300 (holding that Article 22 prevents a landlord from evicting a diplomatic mission to the U.N. from its premises for non-payment of rent).

The principle of mission inviolability set forth in Article 22 precludes service of process on the premises of a mission. *See 40 D 6262 Realty Corp. v. United Arab Emirates*, 447 F. Supp. 710, 712 n.3 (S.D.N.Y. 1978) (citing Article 22 in holding ineffective purported service of process by posting copies of the summons and complaint on the premises of a foreign mission and mailing copies of those documents to the mission). The drafters’ commentary on Article 22 confirms that service of process on the premises of a mission runs afoul of the principle of mission inviolability:

A special application of this principle is the rule that no writ may be served within the premises of the mission, and that no summons to appear before a court may be served in the premises by a process server. Even if process servers do not enter the premises but carry out their duty at the door, such an act would constitute an infringement of the respect due to the mission. The service of such documents should be effected in some other way.

Report of the International Law Commission, Diplomatic Intercourse and Immunities, U.N.

GAOR, 13<sup>th</sup> Sess., Supp. 9, U.N. Doc. A/3859 (1958), reprinted in [1958] II Y.B. Int’l L.

Comm’n 89, 95, U.N. Doc. A/CN.4/SER.A/1958/Add.1. In its comments on a draft of Article 22, the United States also explicitly “agree[d] that a process server may not serve a summons or process on the premises of the mission.” *Id.* at 136.<sup>7</sup> Since the premises of the Congo’s U.N.

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<sup>7</sup> This type of commentary is particularly relevant to the interpretation of an international agreement such as the Vienna Convention. *See Eastern Airlines, Inc. v. Floyd*, 499 U.S. 530, 535 (1991) (“[T]reaties are construed more liberally than private agreements, and to ascertain their meaning we may look beyond the written words to the history of the treaty, the negotiations, and the practical construction adopted by the parties.” (Internal quotation marks and citation omitted)); *see also 767 Third Avenue Assoc.*, 988 F.2d at 298–300 (relying extensively on draft commentary in interpreting the Vienna Convention).

Mission are inviolable under the Vienna Convention, Plaintiff could not properly effectuate service by personally serving an unnamed woman on the premises of the Mission. See 40 D 6262 Realty Corp., 447 F. Supp. at 712 n.3.

**B. Based on the Record, Plaintiff Failed to Properly Serve the Default Judgment Upon the Congo's U.N. Mission in Accordance with the FSIA.**

Another provision of the FSIA, 28 U.S.C. § 1608(e), specifies that a copy of any default judgment obtained against a foreign state “shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section,” i.e., using one of the four methods specified in Section 1608(a), which are discussed in Part A above. There is no indication in the record that Plaintiff served the default judgment upon the Congo's U.N. Mission in accordance with any of the methods specified in Section 1608(a). Thus, Plaintiff appears to have failed to properly serve the Congo's U.N. Mission with the default judgment.

**C. Under the United States' International Agreements, the Diplomatic Property of the Congo's U.N. Mission Is Immune From Attachment or Execution.**

Plaintiff, through counsel, has represented to the Court that he has filed liens against the Mission's office and the official residence of Ambassador Balé as part of his efforts to enforce the default judgment he obtained against the Congo's U.N. Mission. See Pl.'s Mot. to Remand, Dkt. No. 6, at 2. The Vienna Convention provides that the premises of diplomatic missions “shall be immune from . . . attachment or execution.” Vienna Convention art. 22.3. As such, Plaintiff is foreclosed from attempting to execute on or enforce any liens that he has filed against the Mission's office or Ambassador Balé's official residence, both of which are clearly part of the premises of the Congo's U.N. Mission that enjoy immunity from attachment and execution

under the Headquarters Agreement and the U.N. Convention, which render the provisions of the Vienna Convention applicable to permanent missions to the United Nations. See id. art. 1(i); cf. 767 Third Avenue Assocs., 988 F.2d at 297–98.

In addition, bank accounts belonging to the Congo’s U.N. Mission that are used for Mission purposes are also protected from attachment and execution. The United States is obligated under the U.N. Charter to provide U.N. diplomatic missions with “such privileges and immunities as are necessary for the independent exercise of [its] functions in connection with the [United Nations].” U.N. Charter art. 105, para. 2. The Vienna Convention also obligates the United States to accord diplomatic missions with “full facilities for the performance of the functions of the mission.” Vienna Convention art. 25.

Courts have drawn on these international agreements to recognize that diplomatic missions’ bank accounts that are used for purposes of the mission are immune from attachment. In Liberian Eastern Timber Corp. v. Government of the Republic of Liberia, 659 F. Supp. 606, 608 (D.D.C. 1987), the court relied on Article 25 of the Vienna Convention to grant Liberia’s motion to quash the writs of attachment seizing its embassy’s bank accounts. The court found that “[t]he Liberian Embassy [would] lack[] the ‘full facilities’ the Government of the United States has agreed to accord if, to satisfy a civil judgment, the Court permits a writ of attachment to seize official bank accounts used or intended to be used for purposes of the diplomatic mission.” Similarly, in Foxworth v. Permanent Mission of the Republic of Uganda to the United Nations, 796 F. Supp. 761 (S.D.N.Y. 1992), a personal-injury plaintiff obtained a default judgment against Uganda’s U.N. Mission, which she sought to satisfy by a writ of execution

against that mission's bank account. Granting Uganda's motion to vacate the writ of execution, the court held that "attachment of defendant's bank account is in violation of the United Nations Charter and the Vienna Convention because it would force defendant to cease operations." Id. at 763. See also Sales v. Republic of Uganda, No. 90 Civ. 3972, 1993 WL 437762, at \*1 (S.D.N.Y. Oct. 23, 1993) ("It is well settled that a foreign state's bank account cannot be attached if the funds are used for diplomatic purposes." (citing Foxworth, 796 F. Supp. 761, and Liberian Eastern Timber Corp., 659 F. Supp. 606)).

In each of the cases cited above, the head of the diplomatic mission submitted an affidavit stating that the bank accounts at issue were used for the functioning of the mission. Here, too, Ambassador Balé has filed with this Court a signed declaration stating that the Mission's bank accounts that have been attached "are used for embassy-related and diplomatic purposes." Balé Decl., Dkt. 8 ¶ 12. Such a declaration has been held to be a sufficient basis for a court to find that bank accounts are "official bank accounts used or intended to be used for purposes of the diplomatic mission." Liberian Eastern Timber Corp., 659 F. Supp. at 608. For the United States to be in compliance with its obligations under these international agreements, such bank accounts must be accorded diplomatic immunity from attachment.

The attachment of foreign mission property implicates important foreign policy interests of the United States. In view of the vital governmental functions of foreign missions, it is imperative that they have the means to sustain their operations in the United States, which requires access to official bank accounts used for mission purposes. The attachment of a mission's bank account or execution on the premises of the mission may adversely affect the



United States' relationships with foreign states. Furthermore, such actions may make it more difficult for the United States to enlist the assistance of the foreign government when private parties attempt to attach U.S. bank accounts and other assets abroad. In order to vindicate the United States' interests in maintaining relationships with foreign governments, the Court should ensure that the Congo's U.N. Mission and its bank accounts are accorded the full protections to which they are entitled under international agreements.

## CONCLUSION

For the reasons demonstrated above, (1) based on the record, Plaintiff's purported service of the summons and complaint upon the Congo's U.N. Mission failed to comply with the FSIA and was contrary to the Vienna Convention; (2) based on the record, Plaintiff failed to properly serve the default judgment on the Congo's U.N. Mission in accordance with the FSIA; and (3) the premises of the Congo's U.N. Mission, as well as any bank accounts used by the Mission for diplomatic purposes, are immune from attachment or execution under international agreements to which the United States is a party. The United States urges appropriate judicial action to address this situation.

Dated: Brooklyn, New York  
August 4, 2011

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